

AMENDED IN ASSEMBLY MAY 7, 2003

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1240

Introduced by Assembly Member Mullin

February 21, 2003

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as amended, Mullin. Care facilities: criminal record clearances.

Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or day care facility, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in the any of these facilities, except as specified. Existing law requires the Department of Justice to conduct the search for criminal history information, and also to have a 2nd set of fingerprints processed by the Federal Bureau of Investigation.

Existing law also authorizes the department to revoke a license, permit, or certificate for approval to operate or manage these facilities if any person employed by, residing at, or present in, in specified

capacities, a facility listed above has been convicted of specified offenses, unless the department has granted an exemption from disqualification.

This bill would authorize the department to take specified actions if it is determined, after licensure, the issuance of a special permit, or the granting of a certificate of approval to manage or operate a facility listed above, that a licensee, special permit holder, certificate holder, as appropriate, or person employed by, residing at, or present in the facility, in specified capacities, has been convicted of specified offenses.

Existing law requires that, subsequent to initial licensure a licensee must obtain fingerprinting and a criminal record clearance for any person who is employed by, resides at, or is present in, a facility.

This bill would require the department to issue against the licensee, special permitholder, or certificate holder a citation of deficiency and assess civil penalties, as specified, for failure to exclude specified persons convicted of specified offenses who have not obtained a criminal record clearance or an exemption, and would provide that the licensee's failure to exclude these persons would be grounds for disciplining the licensee.

Existing law requires the department to notify an individual with an arrest or conviction of his or her right to seek an exemption from disqualification.

This bill would eliminate that requirement and would authorize only an applicant for, or a holder of, a license, special permit, or certificate of approval to request an exemption on behalf of an individual with a record of specified convictions or arrests.

Existing law establishes a procedure by which the director may grant an exemption from disqualification for a license, special permit, or certificate of approval to manage or operate a facility listed above, or to be employed by, reside in, or be present in a facility listed above. Existing law provides that an exemption shall not be granted if the conviction was for specified offenses.

This bill would expand that list of offenses.

This bill would also make various conforming changes and correct cross-references.

Because a violation of any law relating to these facilities is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:
3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. Therefore, the
9 Legislature supports the use of the fingerprint live-scan
10 technology, as identified in the long-range plan of the Department
11 of Justice for fully automating the processing of fingerprints and
12 other data by the year 1999, otherwise known as the California
13 Crime Information Intelligence System (CAL-CII), to be used for
14 applicant fingerprints. It is the intent of the Legislature in enacting
15 this section to require the fingerprints of those individuals whose
16 contact with community care clients may pose a risk to the clients'
17 health and safety.
18 (a) (1) Before issuing a license or special permit to any person
19 or persons to operate or manage a community care facility, and
20 before any person specified in subdivision (b) who is not exempted
21 from fingerprinting is employed by, resides at, or is present in a
22 community care facility, the State Department of Social Services
23 shall secure from an appropriate law enforcement agency criminal
24 history information to determine whether the applicant or any
25 other person specified in subdivision (b) who is not exempted from
26 fingerprinting has ever been convicted of a crime, other than an
27 infraction, or arrested for any crime specified in Section 290 of the
28 Penal Code, for violating Section 245 or 273.5 of the Penal Code,
29 for violating subdivision (b) of Section 273a of the Penal Code, or,
30 prior to January 1, 1994, paragraph (2) of Section 273a of the Penal



1 Code, or any crime for which the department cannot grant an
2 exemption from disqualification pursuant to subdivision (g).

3 (2) The criminal history information shall include the full
4 criminal record, if any, of those persons and subsequent arrest
5 information pursuant to Section 11105.2 of the Penal Code.

6 (3) Notwithstanding subdivision (k), neither the Department
7 of Justice or nor the State Department of Social Services may
8 charge a fee for the fingerprinting of an applicant for a license or
9 special permit to operate a facility providing nonmedical board,
10 room, and care for six or fewer children, or for obtaining a criminal
11 history of the applicant pursuant to this section.

12 (4) The following shall apply to the criminal record
13 information:

14 (A) If the State Department of Social Services finds that the
15 applicant, or any other person specified in subdivision (b) who is
16 not exempted from fingerprinting, has been convicted of a crime
17 other than an infraction, the application shall be denied, unless the
18 director grants an exemption pursuant to subdivision (g).

19 (B) If the department finds that the applicant, or any other
20 person specified in subdivision (b) who is not exempted from
21 fingerprinting, is awaiting trial for a crime other than a ~~minor~~
22 ~~traffic violation~~, *an infraction*, the department may cease
23 processing the application until the conclusion of the trial or other
24 disposition of the case.

25 (C) If no criminal history information has been recorded, the
26 Department of Justice shall provide the applicant and the State
27 Department of Social Services with a statement of that fact.

28 (D) If the department finds after licensure or the issuance of a
29 special permit that the licensee, special permitholder, or any other
30 person specified in subdivision (b) who is not exempted from
31 fingerprinting, has been convicted of a crime other than an
32 infraction, the license or special permit may be revoked, unless the
33 director grants an exemption pursuant to subdivision (g).

34 (E) In addition to the criminal records search required by this
35 subdivision, an applicant for licensure shall submit a second set of
36 fingerprints to the Department of Justice for the purpose of
37 searching the criminal records of the Federal Bureau of
38 Investigation. If an applicant meets all of the conditions for
39 licensure, except for the State Department of Social Services'
40 receipt of the Federal Bureau of Investigation's criminal history

1 information for the applicant, the department may, but is not
 2 required to, issue a license or special permit if the applicant has
 3 signed and submitted a declaration, under penalty of perjury, that
 4 he or she has never been convicted of a crime in the United States,
 5 other than an infraction. If, after licensure or the granting of a
 6 special permit, the department determines, based on the results
 7 from the Federal Bureau of Investigation's criminal record search,
 8 that the licensee or special permitholder has a conviction for any
 9 crime other than an infraction, the department may revoke the
 10 license pursuant to Section 1550. The department may also
 11 suspend the license pending an administrative hearing pursuant to
 12 Section 1550.5.

13 (F) In addition to the criminal records search required by this
 14 subdivision, each person specified in subdivision (b) who is not
 15 exempted from fingerprinting shall submit a second set of
 16 fingerprints to the Department of Justice for the purpose of
 17 searching the criminal records of the Federal Bureau of
 18 Investigation for records for that person. If any person specified
 19 in subdivision (b) who is not exempted from fingerprinting obtains
 20 either a criminal record clearance from the Department of Justice
 21 or an exemption from disqualification pursuant to subdivision (g)
 22 from the State Department of Social Services pending the
 23 department's receipt of the Federal Bureau of Investigation's
 24 criminal history information for that person, the department may,
 25 but is not required to, allow that person to be employed by, reside
 26 at, or be present, in the community care facility if the person has
 27 signed and submitted to the department a declaration, under
 28 penalty of perjury, that he or she has never been convicted of a
 29 crime in the United States, other than an infraction. If, after
 30 obtaining a criminal record clearance or exemption from
 31 disqualification pursuant to subdivision (g) for a person specified
 32 in subdivision (b) who is not exempted from fingerprinting, the
 33 department determines, based on the results from the Federal
 34 Bureau of Investigation's criminal record search, that the person
 35 has a conviction of any crime other than an infraction, the
 36 department shall determine if the person should be removed *or*
 37 *excluded, or both*, from the facility pursuant to paragraph (3) of
 38 subdivision (c) until a decision on the exemption from
 39 disqualification is rendered.



(G) If, after licensure or the granting of a special permit, the department determines that the licensee or special permitholder or any other person specified in subdivision (b) who is not exempted from fingerprinting has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions and arrests of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee or special permitholder if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption shall not apply to a person who is a community care facility licensee, special permitholder, or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption shall not apply to a person who is a community care licensee, special permitholder, or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

1 (i) Members are not left alone with clients.

2 (ii) Members do not transport clients off the facility premises.

3 (iii) The same organization does not conduct group activities
4 for clients more often than defined by the department's
5 regulations.

6 (3) In addition to the exemptions in paragraph (2), the
7 following persons in foster family homes, certified family homes,
8 and small family homes are exempt from the requirements
9 applicable under paragraph (1):

10 (A) Adult friends and family of the licensee or special
11 permitholder who come into the home to visit for a length of time
12 no longer than defined by the department in regulations, provided
13 that the adult friends and family of the licensee or special
14 permitholder are not left alone with the foster children.

15 (B) Parents of a foster child's friends when the foster child is
16 visiting the friend's home and the friend, foster parent, or both are
17 also present.

18 (4) In addition to the exemptions specified in paragraph (2), the
19 following persons in adult day care and adult day support centers
20 are exempt from the requirements applicable under paragraph (1):

21 (A) Unless contraindicated by the client's individualized
22 program plan (IPP) or needs and service plan, a spouse, significant
23 other, relative, or close friend of a client, or an attendant or a
24 facilitator for a client with a developmental disability if the
25 attendant or facilitator is not employed, retained, or contracted by
26 the licensee or special permitholder. This exemption applies only
27 if the person is visiting the client or providing direct care and
28 supervision to the client.

29 (B) A volunteer if all of the following applies:

30 (i) The volunteer is supervised by the licensee or special
31 permitholder or a facility employee with a criminal record
32 clearance or exemption.

33 (ii) The volunteer is never left alone with clients.

34 (iii) The volunteer does not provide any client assistance with
35 dressing, grooming, bathing, or personal hygiene other than
36 washing of hands.

37 (5) (A) In addition to the exemptions specified in paragraph
38 (2), the following persons in adult residential and social
39 rehabilitation facilities, unless contraindicated by the client's
40 individualized program plan (IPP) or needs and services plan, are

1 exempt from the requirements applicable under paragraph (1): a
2 spouse, significant other, relative, or close friend of a client, or an
3 attendant or a facilitator for a client with a developmental
4 disability if the attendant or facilitator is not employed, retained,
5 or contracted by the licensee. This exemption applies only if the
6 person is visiting the client or providing direct care and
7 supervision to that client.

8 (B) Nothing in this subdivision shall prevent a licensee or
9 special permitholder from requiring a criminal record clearance of
10 any individual exempt from the requirements of this section,
11 provided that the individual has client contact.

12 (6) Any person similar to those described in this subdivision,
13 as defined by the department in regulations, ~~is exempt from the~~
14 ~~requirements applicable under paragraph (1).~~

15 (c) (1) Any person specified in subdivision (b) who is not
16 exempted from fingerprinting shall obtain either a criminal record
17 clearance from the Department of Justice or an exemption from
18 disqualification pursuant to subdivision (g) from the State
19 Department of Social Services prior to his or her initial presence
20 in a facility. Any person specified in subdivision (b) who is not
21 exempted from fingerprinting shall be fingerprinted and shall sign
22 a declaration, under penalty of perjury, regarding any prior
23 criminal conviction. The licensee or special permitholder shall
24 submit these fingerprints to the Department of Justice, along with
25 a second set of fingerprints for the purpose of searching the records
26 of the Federal Bureau of Investigation, or shall comply with
27 paragraph (1) of subdivision (h). These fingerprints shall be in a
28 form required by the State Department of Social Services or sent
29 by electronic transmission in a manner approved by the State
30 Department of Social Services and the Department of Justice for
31 the purpose of obtaining a permanent set of fingerprints, and shall
32 be submitted to the Department of Justice by the licensee or special
33 permitholder. A licensee's or a special permitholder's failure to
34 prohibit the initial presence in a facility of any person specified in
35 subdivision (b) who is not exempted from fingerprinting and who
36 has not received either a criminal record clearance or an exemption
37 from disqualification pursuant to subdivision (g) shall result in the
38 citation of a deficiency and the immediate assessment of civil
39 penalties, by the State Department of Social Services and against
40 the licensee or special permitholder, in the amount of one hundred

1 dollars (\$100) per violation per day, for a maximum of 50 days,
2 and also shall be grounds for disciplining the licensee pursuant to
3 Section 1550. A licensee's or a special permitholder's failure to
4 submit fingerprints to the Department of Justice or to comply with
5 paragraph (1) of subdivision (h), as required in this section, shall
6 result in the citation of a deficiency and the immediate assessment
7 of civil penalties, by the State Department of Social Services and
8 against the licensee or special permitholder, in the amount of one
9 hundred dollars (\$100) per violation per day, for a maximum of 50
10 days, and shall be grounds for disciplining the licensee pursuant
11 to Section 1550. The department may also assess civil penalties
12 against the licensee for continued violations as permitted by
13 Section 1548. The fingerprints shall then be submitted to the
14 Department of Justice for processing. Upon request of the licensee
15 or special permitholder, who shall enclose a self-addressed
16 stamped postcard for this purpose, the Department of Justice shall
17 verify receipt of the fingerprints.

18 (2) Within 14 calendar days of the receipt of the fingerprints,
19 the Department of Justice shall notify the State Department of
20 Social Services of the criminal history information, as provided
21 for in subdivision (a). If no criminal history information has been
22 recorded, the Department of Justice shall provide the licensee or
23 special permitholder and the State Department of Social Services
24 with a statement of that fact within 14 calendar days of receipt of
25 the fingerprints. Documentation of the individual's clearance or
26 exemption from disqualification pursuant to subdivision (g) shall
27 be maintained by the licensee or special permitholder and shall be
28 available for inspection. If new fingerprints are required for
29 processing, the Department of Justice shall, within 14 calendar
30 days from the date of receipt of the fingerprints, notify the licensee
31 or special permitholder that the fingerprints are required. The
32 Department of Justice shall notify the State Department of Social
33 Services, as required by Section 1522.04, and shall also notify the
34 licensee or special permitholder by mail, within 14 days of
35 electronic transmission of the fingerprints to the Department of
36 Justice, if the person has no criminal history recorded. A violation
37 of the regulations adopted pursuant to Section 1522.04 shall result
38 in the citation of a deficiency and an immediate assessment of civil
39 penalties, by the State Department of Social Services and against
40 the licensee or special permitholder, in the amount of one hundred

1 dollars (\$100) per violation per day, for a maximum of 50 days,
2 and shall be grounds for disciplining the licensee pursuant to
3 Section 1550. The department may also assess civil penalties for
4 continued violations as permitted by Section 1548.

5 (3) Except for persons specified in subdivision (b) as exempt
6 from the criminal record clearance requirement, the licensee or
7 special permitholder shall endeavor to ascertain the previous
8 employment history of persons required to be fingerprinted under
9 subdivision (b). If it is determined by the State Department of
10 Social Services, on the basis of the fingerprints submitted to the
11 Department of Justice, that subsequent to obtaining a criminal
12 record clearance or exemption from disqualification pursuant to
13 subdivision (g), the person has been convicted of, or is awaiting
14 trial for, a sex offense against a minor, or has been convicted for
15 an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
16 the Penal Code, or a felony, the State Department of Social
17 Services shall notify the licensee or special permitholder to act
18 immediately to terminate the person's employment, remove the
19 person from the community care facility, or bar the person from
20 entering the community care facility. The State Department of
21 Social Services may subsequently grant an exemption from
22 disqualification pursuant to subdivision (g). If the conviction was
23 for another crime, except an infraction, the licensee or special
24 permitholder shall, upon notification by the department, act
25 immediately to either (A) terminate the person's employment,
26 remove the person from the community care facility, or bar the
27 person from entering the community care facility, as appropriate;
28 or (B) seek an exemption from disqualification pursuant to
29 subdivision (g). The department shall determine if the person shall
30 be allowed to remain in the facility until a decision on the
31 exemption from disqualification is rendered. A licensee's or
32 special permitholder's failure to comply with the department's
33 prohibition of employment, contact with clients, or presence in the
34 facility as required by this paragraph shall result in a citation of a
35 deficiency and an immediate assessment of civil penalties, by the
36 department and against the licensee or special permitholder, in the
37 amount of one hundred dollars (\$100) per violation per day, for a
38 maximum of 50 days, and shall be grounds for disciplining the
39 licensee pursuant to Section 1550.

(4) The department may issue an exemption from disqualification on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption from disqualification pursuant to this paragraph.

(5) Only an applicant for licensure or a licensee, or an applicant for a special permit or a special permitholder, may request an exemption pursuant to subdivision (g) on behalf of an individual specified in subdivision (b) who is not exempt from fingerprinting.

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure criminal history information from an appropriate law enforcement agency to determine whether the applicant or any person specified in subdivision (b) who is not exempted from fingerprinting has ever been convicted of a crime other than an infraction or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5 of the Penal Code, for violating subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption from disqualification pursuant to subdivision (g).

(2) The criminal history information shall include the full criminal record, if any, of those persons and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Notwithstanding subdivision (k), neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The criminal history, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal history information:

(A) If the applicant or other persons specified in subdivision (b) who are not exempted from fingerprinting have any conviction or arrest that would make the applicant's home unfit as a foster family

home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) who is not exempted from fingerprinting, is awaiting trial for a crime other than an infraction, the department or other approving authority may cease processing the application until the conclusion of the trial or other disposition of the case.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or special permit, or for certification as a family home, and any other person specified in subdivision (b) who is not exempted from fingerprinting, shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, for a special permit, or for certification, except the State Department of Social Services' receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b) who are not exempted from fingerprinting, the department ~~may~~ *may, but is not required to*, issue a license or special permit, or the foster family agency ~~may~~ *may, but is not required to*, issue a certificate of approval, if the applicant, and each person described in subdivision (b) who is not exempted from fingerprinting, has signed and submitted a declaration, under penalty of perjury, that he or she has never been convicted of a crime in the United States, other than an infraction. If, after licensure, the issuance of a special permit, or certification, the department determines that the licensee, special permitholder, certified foster parent, or any person specified in subdivision (b) who is not exempted from fingerprinting has a criminal history of any conviction or arrest as specified in this paragraph, subject to subdivision (e), the license may be revoked pursuant to Section ~~1550~~ *and 1550*, or the certificate of approval revoked pursuant to subdivision (b) of Section ~~1534~~ *1534*, or the person may be excluded from the facility pursuant to Section 1558. The department may also

1 suspend the license pending an administrative hearing pursuant to
2 Section 1550.5.

3 (5) Any person specified in this subdivision shall, as a part of
4 the application, be fingerprinted and sign a declaration, under
5 penalty of perjury, regarding any prior criminal convictions or
6 arrests for any crime against a child, spousal or cohabitant abuse,
7 or any crime for which the department cannot grant an exemption
8 from disqualification pursuant to subdivision (g) if the person was
9 convicted, and shall submit these fingerprints to the licensing
10 agency or other approving authority.

11 (6) (A) Any person specified in subdivision (b) who is not
12 exempted from fingerprinting shall obtain either a criminal record
13 clearance from the Department of Justice, or an exemption from
14 disqualification pursuant to subdivision (g) from the State
15 Department of Social Services, prior to his or her initial presence
16 in a facility. Any person specified in subdivision (b) who is not
17 exempted from fingerprinting shall be fingerprinted and shall sign
18 a declaration, under penalty of perjury, regarding any prior
19 criminal conviction. The foster family agency shall obtain
20 fingerprints from certified home applicants, and from persons
21 specified in subdivision (b) who are not exempted from
22 fingerprinting, and shall submit them directly to the Department
23 of Justice or send them by electronic transmission in a manner
24 approved by the State Department of Social Services. A foster
25 family home licensee or special permitholder, ~~certified family~~
26 ~~home~~, or foster family agency shall submit these fingerprints to the
27 Department of Justice, along with a second set of fingerprints for
28 investigation. A licensee's, special permitholder's, or certificate
29 holder's failure to prohibit the initial presence in a facility of any
30 person specified in subdivision (b) who is not exempted from
31 fingerprinting and who has not received either a criminal record
32 clearance or an exemption from disqualification pursuant to
33 subdivision (g) this section shall result in a citation of a deficiency,
34 and the immediate civil penalties, by the department and against
35 the licensee, special permitholder, or certificate holder of one
36 hundred dollars (\$100) per violation per day, for a maximum of 50
37 ~~days. days, and shall be grounds for disciplining the licensee or~~
38 ~~certificate holder pursuant to Section 1534 or Section 1550.~~ The
39 State Department of Social Services may assess penalties for
40 continued violations, as permitted by Section 1548. The

fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, special permitholder, or certificate holder, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal history information regarding criminal convictions or arrests from the Department of Justice, the State Department of Social Services shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or special permitholder, the certified family home, or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) who is not exempted from fingerprinting, has been convicted of a crime other than an infraction, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of a special permit or a certificate of approval that the licensee, special permitholder, certified foster parent, or any other person specified in subdivision (b) who is not exempt from fingerprinting, has been convicted of a crime other than an infraction, the license, special permit, or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's, special permitholder's, or certificate holder's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee ~~pursuant to Section 1550~~ or certificate holder pursuant to Section 1534 or Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, special permit, certificate of approval, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest,

1 that is admissible in an administrative hearing to establish conduct
2 by the person that may pose a risk to the health and safety of any
3 person who is or may become a client. The department is
4 authorized to obtain any arrest or conviction records or reports
5 from any law enforcement agency as necessary to the performance
6 of its duties to inspect, license, issue a special permit for, and
7 investigate community care facilities and individuals associated
8 with a community care facility.

9 (f) (1) For purposes of this section or any other provision of
10 this chapter, a conviction means a plea or verdict of guilty or a
11 conviction following a plea of nolo contendere. Any action that the
12 State Department of Social Services is permitted to take following
13 the establishment of a conviction may be taken when the time for
14 appeal has elapsed, when the judgment of conviction has been
15 affirmed on appeal, or when an order granting probation is made
16 suspending the imposition of sentence, notwithstanding a
17 subsequent order pursuant to Sections 1203.4 and 1203.4a of the
18 Penal Code permitting the person to withdraw his or her plea of
19 guilty and to enter a plea of not guilty, or setting aside the verdict
20 of guilty, or dismissing the accusation, information, or indictment.
21 For purposes of this section or any other provision of this chapter,
22 the record of a conviction, or a copy thereof certified by the clerk
23 of the court or by a judge of the court in which the conviction
24 occurred, shall be conclusive evidence of the conviction. For
25 purposes of this section or any other provision of this chapter, the
26 arrest disposition report certified by the Department of Justice, or
27 documents admissible in a criminal action pursuant to Section
28 969b of the Penal Code, shall be prima facie evidence of the
29 conviction, notwithstanding any other provision of law
30 prohibiting the admission of these documents in a civil or
31 administrative action.

32 (2) For purposes of this section or any other provision of this
33 chapter, the department shall consider criminal convictions from
34 another state or federal court, or arrests from another state or by
35 any federal agency, as if the criminal offense was committed in this
36 state.

37 (g) (1) After review of the record, the director may grant an
38 exemption from disqualification for a license or special permit as
39 specified in subdivision (a), or for a license, special permit, or
40 certificate of approval as specified in subdivision (d), or for



employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant or other person convicted of the crime is of such good character as to justify issuance of the license, special permit, or certificate of approval, or the granting of an exemption pursuant to this subdivision. Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) ~~(i) An offense specified in Section 220, subdivision (b) of Section 237, Section 243.4, Section 246, Section 264.1, Section 266a, Section 266e, Section 273a, Section 273ab, Section 273d, subdivision (e) of Section 273.5, Section 288, or Section 289, of the Penal Code, any offense listed in Section 290 of the Penal Code, any conviction for which the court ordered the individual to register as a sex offender pursuant to Section 290 of the Penal Code, Section 368, or subdivision (b) of Section 417, of the Penal Code, a conviction of any crime specified in subdivision (c) of Section 667.5 of the Penal Code, or any crime of violence specified in any regulation.~~

~~(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (e) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.~~

(B) A felony offense specified in Section 729 of the Business and Professions Code or in Section 206, Section 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451, of the Penal Code.

(C) An offense specified in Section 11379.6 of the *Health and Safety Code*.

(D) First degree burglary.

(2) The department shall not prohibit a person from being employed by or from having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the State Department of Social Services may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The department shall hold criminal record clearances in its active files for a minimum of two years after a person is no longer employed by, residing at, or present in a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal history obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee, special permitholder, certificate holder, or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the department that the employee has a prior criminal conviction, or an arrest for any crime specified in subparagraph (B) of paragraph (1) of subdivision (a), or is determined unsuitable for employment under Section 1558, the licensee, special permitholder, certificate holder, or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing a set of live-scan fingerprints.

1 SEC. 2. Section 1568.09 of the Health and Safety Code is
2 amended to read:

3 1568.09. It is the intent of the Legislature in enacting this
4 section to require the fingerprints of those individuals whose
5 contact with residents of residential care facilities for persons with
6 a chronic, life-threatening illness may pose a risk to the residents'
7 health and safety.

8 Therefore, the Legislature supports the use of the fingerprint
9 live-scan technology, as identified in the long-range plan of the
10 Department of Justice for fully automating the processing of
11 fingerprints and other data by the year 1999, otherwise known as
12 the California Crime Information Intelligence System (CAL-CII),
13 to be used for applicant fingerprints. It is the intent of the
14 Legislature, in enacting this section, to require the fingerprints of
15 those individuals whose contact with community care clients may
16 pose a risk to the clients' health and safety.

17 (a) (1) Before issuing a license to any person or persons to
18 operate or manage a residential care facility, and before any person
19 specified in subdivision (b) who is not exempted from
20 fingerprinting is employed by, resides at, or is present in a
21 residential care facility for persons, with a chronic,
22 life-threatening illness, the department shall secure from an
23 appropriate law enforcement agency criminal history information
24 to determine whether the applicant or any other person specified
25 in subdivision (b) who is not exempted from fingerprinting has
26 ever been convicted of a crime other than an infraction, or arrested
27 for any crime specified in Section 290 of the Penal Code, for
28 violating Section 245 or 273.5 of the Penal Code, for violating
29 subdivision (b) of Section 273a of the Penal Code, or, prior to
30 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
31 or convicted of any crime for which the department cannot grant
32 an exemption from disqualification pursuant to subdivision (f).

33 (2) The criminal history information shall include the full
34 criminal record if any, of those persons, and arrest information
35 pursuant to Section 11105.2 of the Penal Code.

36 (3) The following shall apply to the criminal record
37 information:

38 (A) If the department finds that the applicant or any other
39 person specified in subdivision (b) who is not exempted from
40 fingerprinting has been convicted of a crime, other than an

1 infraction, the application shall be denied, unless the director
2 grants an exemption from disqualification pursuant to subdivision
3 (f).

4 (B) If the department finds that the applicant, or any other
5 person specified in subdivision (b) who is not exempted from
6 fingerprinting is awaiting trial for a crime other than ~~a minor traffic~~
7 ~~violation~~, *an infraction*, the department may cease processing the
8 application until the conclusion of the trial or other deposition of
9 the case.

10 (C) If no criminal history information has been recorded, the
11 Department of Justice shall provide the applicant and the State
12 Department of Social Services with a statement of that fact.

13 (D) If the State Department of Social Services finds after
14 licensure that the licensee, or any other person specified in
15 subdivision (b) who is not exempted from fingerprinting, has been
16 convicted of a crime other than an infraction, the license may be
17 revoked, unless the director grants an exemption pursuant to
18 subdivision (f).

19 (E) In addition to the criminal records search required by this
20 subdivision, an applicant for licensure shall submit to the
21 Department of Justice a second set of fingerprints for the purpose
22 of searching the records of the Federal Bureau of Investigation. If
23 an applicant meets all other conditions for licensure, except for the
24 State Department of Social Services' receipt of the Federal Bureau
25 of Investigation's criminal history information for the applicant,
26 the department may, but is not required to, issue a license if the
27 applicant has signed and submitted a declaration, under penalty of
28 perjury, that he or she has never been convicted of a crime in the
29 United States, other than an infraction. If, after licensure, the
30 department determines, based on the results from the Federal
31 Bureau of Investigation's criminal record search, that the licensee
32 has a conviction for any crime other than an infraction, the
33 department may then revoke the license pursuant to Section
34 1568.082. The department may also suspend the license pending
35 an administrative hearing pursuant to Section 1568.082.

36 (F) In addition to the criminal records search required by this
37 subdivision, each person specified in subdivision (b) who is not
38 exempted from fingerprinting shall submit a second set of
39 fingerprints to the Department of Justice for the purpose of
40 searching the criminal records of the Federal Bureau of

1 Investigation for records for that person. If any person specified
 2 in subdivision (b) who is not exempted from fingerprinting obtains
 3 either a criminal record clearance from the Department of Justice
 4 or an exemption from disqualification pursuant to subdivision (f)
 5 from the State Department of Social Services pending the
 6 department's receipt of the Federal Bureau of Investigation's
 7 criminal history information for the person, the department may,
 8 but is not required to, allow that person to be employed by, reside
 9 at, or be present in, the residential care facility if the person has
 10 signed and submitted to the department a declaration, under
 11 penalty of perjury, that he or she has never been convicted of a
 12 crime in the United States, other than an infraction. If, after
 13 obtaining a criminal record clearance or exemption from
 14 disqualification pursuant to subdivision (f) for a person specified
 15 in subdivision (b) who is not exempted from fingerprinting, the
 16 department determines, based on the results from the Federal
 17 Bureau of Investigation's criminal record search, that the person
 18 has a conviction for any crime other than an infraction, the
 19 department shall determine if the person should be removed or
 20 excluded, or both, from the facility pursuant to paragraph (4) of
 21 subdivision (c) until a decision on the exemption from
 22 disqualification is rendered.

23 (G) If, after licensure, the department determines that the
 24 licensee or person specified in subdivision (b) who is not exempted
 25 from fingerprinting has a criminal record, the license may be
 26 revoked pursuant to subdivision (a) of Section 1568.082, or the
 27 person may be excluded from the facility pursuant to Section
 28 1568.092. The department may also suspend the license pending
 29 an administrative hearing pursuant to subdivision (b) of Section
 30 1568.082.

31 (b) In addition to the applicant, the provisions of this section
 32 shall be applicable to criminal convictions and arrests of the
 33 following persons:

34 (1) Adults responsible for administration or direct supervision
 35 of staff of the facility.

36 (2) Any person, other than a resident, residing in the facility.

37 (3) Any person who provides resident assistance in dressing,
 38 grooming, bathing, or personal hygiene. Any nurse assistant or
 39 home health aide meeting the requirements of Section 1338.5 or
 40 1736.6, respectively, who is not employed, retained, or contracted

1 by the licensee, and who has been certified or recertified on or after
2 July 1, 1998, shall be deemed to meet the criminal record clearance
3 requirements of this section. A certified nurse assistant and
4 certified home health aide who will be providing client assistance
5 and who falls under this exemption shall provide one copy of his
6 or her current certification, prior to providing care, to the
7 residential care facility for persons with chronic, life-threatening
8 illness. The facility shall maintain the copy of the certification on
9 file as long as care is being provided by the certified nurse assistant
10 or certified home health aide at the facility. Nothing in this
11 paragraph restricts the right of the department to exclude a
12 certified nurse assistant or certified home health aide from a
13 licensed residential care facility for persons with chronic,
14 life-threatening illness pursuant to Section 1568.092.

15 (4) (A) Any staff person, volunteer, or employee who has
16 contact with the residents.

17 (B) A volunteer shall be exempt from the requirements of this
18 subdivision if he or she is a relative, significant other, or close
19 friend of a client receiving care in the facility and the volunteer
20 does not provide direct care and supervision of residents. A
21 volunteer who provides direct care and supervision shall be
22 exempt if the volunteer is a resident's spouse, significant other,
23 close friend, or family member and provides direct care and
24 supervision to that resident only at the request of the resident. The
25 department may define in regulations persons similar to those
26 described in this subparagraph who may be exempt from the
27 requirements of this subdivision.

28 (5) If the applicant is a firm, partnership, association, or
29 corporation, the chief executive officer or other person serving in
30 that capacity.

31 (6) Additional officers of the governing body of the applicant,
32 or other persons with a financial interest in the applicant, as
33 determined necessary by the department by regulation. The
34 criteria used in the development of these regulations shall be based
35 on the person's capability to exercise substantial influence over the
36 operation of the facility.

37 (c) (1) (A) Any person specified in subdivision (b) who is not
38 exempted from fingerprinting shall obtain either a criminal record
39 clearance from the Department of Justice or an exemption from
40 disqualification pursuant to subdivision (f) from the State

1 Department of Social Services prior to his or her initial presence
2 in a residential care facility. Any person specified in subdivision
3 (b) who is not exempted from fingerprinting shall be fingerprinted
4 and shall sign a declaration, under penalty of perjury, regarding
5 any prior criminal convictions. The licensee shall submit these
6 fingerprints to the Department of Justice, along with a second set
7 of fingerprints, for the purpose of searching the records of the
8 Federal Bureau of Investigation, or shall comply with paragraph
9 (1) of subdivision (g).

10 (B) These fingerprints shall be in a form required by the State
11 Department of Social Services for the purpose of obtaining a
12 permanent set of fingerprints and submitted to the Department of
13 Justice by the licensee or sent by electronic transmission in a
14 manner approved by the State Department of Social Services. A
15 licensee's failure to prohibit the initial presence in a facility of any
16 person specified in subdivision (b) who is not exempted from
17 fingerprinting and who has not received either a criminal record
18 clearance or an exemption from disqualification pursuant to
19 subdivision (f) shall result in the citation of a deficiency and the
20 immediate assessment of civil penalties, by the State Department
21 of Social Services and against the licensee, in the amount of one
22 hundred dollars (\$100) per violation per day, for a maximum of 50
23 days, and also shall be grounds for disciplining the licensee
24 pursuant to Section ~~1550~~: 1568.082. A licensee's failure to submit
25 fingerprints to the Department of Justice, or to comply with
26 paragraph (1) of subdivision (g), as required in this section, shall
27 result in the citation of a deficiency and an immediate assessment
28 of civil penalties, by the State Department of Social Services and
29 against the licensee, in the amount of one hundred dollars (\$100)
30 per violation per day, for a maximum of 50 days, and shall be
31 grounds for disciplining the licensee pursuant to Section
32 1568.082. The department may assess civil penalties against the
33 licensee for continued violations as allowed in Section 1568.0822.
34 The fingerprints shall then be submitted to the Department of
35 Justice for processing. The licensee shall maintain and make
36 available for inspection documentation of the individual's
37 clearance or exemption.

38 (2) A violation of the regulations adopted pursuant to Section
39 1522.04 shall result in the citation of a deficiency and an
40 immediate assessment of civil penalties, by the State Department

1 of Social Services and against the licensee, in the amount of one
2 hundred dollars (\$100) per violation per day, for a maximum of 50
3 days, and shall be grounds for disciplining the licensee pursuant
4 to Section 1568.082. The department may also assess civil
5 penalties for continued violations as permitted by Section
6 1568.0822.

7 (3) Within 14 calendar days of the receipt of the fingerprints,
8 the Department of Justice shall notify the State Department of
9 Social Services of the criminal history information, as provided
10 for in this subdivision. If no criminal history information has been
11 recorded, the Department of Justice shall provide the licensee and
12 the State Department of Social Services with a statement of that
13 fact within 14 calendar days of receipt of the fingerprints. If new
14 fingerprints are required for processing, the Department of Justice
15 shall, within 14 calendar days from the date of receipt of the
16 fingerprints, notify the licensee that the fingerprints are required.
17 The Department of Justice shall notify the department, as required
18 by Section 1522.04, and shall notify the licensee by mail within 14
19 days of electronic transmission of the fingerprints to the
20 Department of Justice, if the person has no criminal history record.

21 (4) Except for persons specified in subdivision (b) as exempt
22 from the criminal record clearance requirement, the licensee shall
23 endeavor to ascertain the previous employment history of persons
24 required to be fingerprinted under subdivision (b). If it is
25 determined by the State Department of Social Services, on the
26 basis of the fingerprints submitted to the Department of Justice,
27 that subsequent to obtaining a criminal record clearance or
28 exemption from disqualification pursuant to subdivision (f), the
29 person has been convicted of a sex offense against a minor, an
30 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the
31 Penal Code, or a felony, the department shall notify the licensee to
32 act immediately to terminate the person's employment, remove
33 the person from the residential care facility, or bar the person from
34 entering the residential care facility. The department may
35 subsequently grant an exemption from disqualification pursuant to
36 subdivision (f). If the conviction was for another crime, except an
37 infraction, the licensee shall, upon notification by the department,
38 act immediately to either (A) terminate the person's employment,
39 remove the person from the residential care facility, or bar the
40 person from entering the residential care facility, as appropriate;

1 or (B) seek an exemption from disqualification pursuant to
2 subdivision (f). The department shall determine if the person shall
3 be allowed to remain in the facility until a decision on the
4 exemption from disqualification is rendered. A licensee's failure
5 to comply with the department's prohibition of employment,
6 contact with clients, or presence in the facility as required by this
7 paragraph shall result in a citation of a deficiency and an
8 immediate assessment of civil penalties, by the department and
9 against the licensee, in the amount of one hundred dollars (\$100)
10 per violation per day, for a maximum of 50 days, and shall be
11 grounds for disciplining the licensee pursuant to Section
12 1568.082.

13 (5) The department may issue an exemption on its own motion
14 pursuant to subdivision (f) if the person's criminal history
15 indicates that the person is of good character based on the age,
16 seriousness, and frequency of the conviction or convictions. The
17 department, in consultation with interested parties, shall develop
18 regulations to establish the criteria to grant an exemption pursuant
19 to this paragraph.

20 (6) Only an applicant for licensure or a licensee may request
21 an exemption from disqualification pursuant to subdivision (f) on
22 behalf of an individual specified in subdivision (b) who is not
23 exempt from fingerprinting.

24 (d) (1) For purposes of this section or any other provision of
25 this chapter, a conviction means a plea or verdict of guilty or a
26 conviction following a plea of nolo contendere. Any action that the
27 department is permitted to take following the establishment of a
28 conviction may be taken when the time for appeal has elapsed,
29 when the judgment of conviction has been affirmed on appeal, or
30 when an order granting probation is made suspending the
31 imposition of the sentence, notwithstanding a subsequent order
32 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
33 permitting that person to withdraw his or her plea of guilty and to
34 enter a plea of not guilty, setting aside the verdict of guilty, or
35 dismissing the accusation, information, or indictment. For
36 purposes of this chapter, the record of a conviction, or a copy
37 thereof certified by the clerk of the court or by a judge of the court
38 in which the conviction occurred, shall be conclusive evidence of
39 the conviction. For purposes of this section or any other provision
40 of this chapter, the arrest disposition report certified by the

1 Department of Justice, or documents admissible in a criminal
2 action pursuant to Section 969b of the Penal Code, shall be prima
3 facie evidence of the conviction, notwithstanding any other
4 provision of law prohibiting the admission of these documents in
5 a civil or administrative action.

6 (2) For purposes of this section or any other provision of this
7 chapter, the department shall consider criminal convictions from
8 another state or federal court, or arrests from another state or by
9 any federal agency, as if the criminal offense was committed in this
10 state.

11 (e) The State Department of Social Services shall not use a
12 record of arrest to deny, revoke, or terminate any application,
13 license, employment, or residence unless the department
14 investigates the incident and secures evidence, whether or not
15 related to the incident of arrest, that is admissible in an
16 administrative hearing to establish conduct by the person that may
17 pose a risk to the health and safety of any person who is or may
18 become a client. The department is authorized to obtain any arrest
19 or conviction records or reports from any law enforcement agency
20 as necessary to the performance of its duties to inspect, license, and
21 investigate residential care facilities for persons with a chronic,
22 life-threatening illness and individuals associated with a
23 residential care facility for persons with a chronic, life-threatening
24 illness.

25 (f) (1) After review of the record, the director may grant an
26 exemption from disqualification for a license as specified in
27 subdivision (a), or for employment, residence, or presence in a
28 residential care facility as specified in subdivision (c), if the
29 director has substantial and convincing evidence to support a
30 reasonable belief that the applicant or other person convicted of the
31 crime is of such good character as to justify issuance of the license
32 or the granting of an exemption pursuant to this subdivision.
33 However, no exemption shall be granted pursuant to this
34 subdivision if the conviction was for any of the following offenses:

35 (A) An offense specified in Section 220, subdivision (b) of
36 Section 237, Section 243.4, Section 246, Section 264.1, Section
37 266a, Section 266e, Section 273a, Section 273ab, Section 273d,
38 subdivision (e) of Section 273.5, Section 288, or Section 289, of
39 the Penal Code, any offense listed in Section 290 of the Penal
40 Code, any conviction for which the court ordered the individual to

1 register as a sex offender pursuant to Section 290 of the Penal
2 Code, Section 368, or subdivision (b) of Section 417, of the Penal
3 Code, a conviction of any crime specified in subdivision (c) of
4 Section 667.5 of the Penal Code, or any crime of violence specified
5 in any regulation.

6 (B) A felony offense specified in Section 729 of the Business
7 and Professions Code or in Section 206, Section 215, subdivision
8 (a) of Section 347, or subdivision (a) of Section 451, of the Penal
9 Code.

10 (C) An offense specified in Section 11379.6 of the *Health and*
11 *Safety Code*.

12 (D) First degree burglary.

13 (2) The department shall not prohibit a person from being
14 employed by or from having contact with clients in a facility on the
15 basis of a denied criminal record exemption request or arrest
16 information unless the department complies with the requirements
17 of Section 1568.092.

18 (g) (1) For purposes of compliance with this section, the State
19 Department of Social Services may permit an individual to
20 transfer a current criminal record clearance, as defined in
21 subdivision (a), from one facility to another, as long as the criminal
22 record clearance has been processed through a state licensing
23 district office, and is being transferred to another facility licensed
24 by a state licensing district office. The request shall be in writing
25 to the department, and shall include a copy of the person's driver's
26 license or valid identification card issued by the Department of
27 Motor Vehicles, or a valid photo identification issued by another
28 state or the United States government if the person is not a
29 California resident. Upon request of the licensee, who shall
30 enclose a self-addressed stamped envelope for this purpose, the
31 department shall verify whether the individual has a clearance that
32 can be transferred.

33 (2) The department shall hold criminal record clearances in its
34 active files for a minimum of two years after a person is no longer
35 employed by, residing at, or present in a licensed facility in order
36 for the criminal record clearance to be transferred.

37 (h) If a licensee or facility is required by law to deny
38 employment or to terminate employment of any employee based
39 on written notification from the state department that the employee
40 has a prior criminal conviction, or has an arrest for any crime

1 specified in subparagraph (B) of paragraph (1) of subdivision (a),
2 or is determined unsuitable for employment under Section
3 1568.092, the licensee or facility shall not incur civil liability or
4 unemployment insurance liability as a result of that denial or
5 termination.

6 (i) The Department of Justice shall charge a fee sufficient to
7 cover its cost in providing services to comply with the 14-day
8 requirement contained in subdivision (c) for provision to the
9 department of criminal history information.

10 SEC. 3. Section 1569.17 of the Health and Safety Code is
11 amended to read:

12 1569.17. The Legislature recognizes the need to generate
13 timely and accurate positive fingerprint identification of
14 applicants as a condition of issuing licenses, permits, or
15 certificates of approval for persons to operate or provide direct
16 care services in a residential care facility for the elderly. The
17 Legislature supports the use of the fingerprint live-scan
18 technology, as identified in the long-range plan of the Department
19 of Justice for fully automating the processing of fingerprints and
20 other data by the year 1999. It is the intent of the Legislature in
21 enacting this section to require the fingerprints of those individuals
22 whose contact with clients of residential care facilities for the
23 elderly may pose a risk to the clients' health and safety.

24 (a) (1) Before issuing a license or special permit to any person
25 or persons to operate or manage a residential care facility for the
26 elderly, and before any person specified in subdivision (b) who is
27 not exempted from fingerprinting is employed by, resides at, or is
28 present in a residential care facility for the elderly, the State
29 Department of Social Services shall secure from an appropriate
30 law enforcement agency criminal history information to
31 determine whether the applicant or any other person specified in
32 subdivision (b) who is not exempted from fingerprinting has ever
33 been convicted of a crime other than an infraction, or arrested for
34 any crime specified in Section 290 of the Penal Code, for violating
35 Section 245 or 273.5 of the Penal Code, for violating subdivision
36 (b) of Section 273a of the Penal Code, or, prior to January 1, 1994,
37 paragraph (2) of Section 273a of the Penal Code, or convicted of
38 any crime for which the department cannot grant an exemption
39 from disqualification pursuant to subdivision (f).

1 (2) The criminal history information shall include the full
2 criminal record, if any, of those persons and subsequent arrest
3 information pursuant to Section 11105.2 of the Penal Code.

4 (3) The following shall apply to the criminal record
5 information:

6 (A) If the State Department of Social Services finds that the
7 applicant or any other person specified in subdivision (b) who is
8 not exempted from fingerprinting has been convicted of a crime,
9 other than an infraction, the application shall be denied, unless the
10 director grants an exemption from disqualification pursuant to
11 subdivision (f).

12 (B) If the department finds that the applicant, or any other
13 person specified in subdivision (b) who is not exempted from
14 fingerprinting, is awaiting trial for a crime other than ~~a minor~~
15 ~~traffic violation~~, *an infraction*, the department may cease
16 processing the application until the conclusion of the trial or other
17 disposition of the case.

18 (C) If no criminal history information has been recorded, the
19 Department of Justice shall provide the applicant and the State
20 Department of Social Services with a statement of that fact.

21 (D) If the department finds after licensure or the issuance of a
22 special permit that the licensee, special permitholder, or any other
23 person specified in subdivision (b) who is not exempt from
24 fingerprinting, has been convicted of a crime other than an
25 infraction, the license or special permit may be revoked, unless the
26 director grants an exemption pursuant to subdivision (f).

27 (E) In addition to the criminal records search required by this
28 subdivision, an applicant for licensure or for a special permit shall
29 submit a second set of fingerprints to the Department of Justice,
30 for the purpose of searching the records of the Federal Bureau of
31 Investigation. If an applicant meets all other conditions for
32 licensure or for a special permit, except for the State Department
33 of Social Services' receipt of the Federal Bureau of Investigation's
34 criminal history information for the applicant, the department
35 may, but is not required to, issue a license or special permit if the
36 applicant has signed and submitted a declaration, under penalty of
37 perjury, that he or she has never been convicted of a crime in the
38 United States, other than an infraction. If, after licensure or the
39 issuance of a special permit, the department determines, based on
40 the results from the Federal Bureau of Investigation's criminal

1 record search that the licensee or special permitholder has a
2 conviction for any crime other than an infraction, the department
3 may revoke the license pursuant to Section 1569.50. The
4 department may also suspend the license pending an
5 administrative hearing pursuant to Sections 1569.50 and 1569.51.

6 (F) In addition to the criminal records search required by this
7 subdivision, each person specified in subdivision (b) who is not
8 exempted from fingerprinting shall submit a second set of
9 fingerprints to the Department of Justice for the purpose of
10 searching the criminal records of the Federal Bureau of
11 Investigation for records for that person. If any person specified
12 in subdivision (b) who is not exempted from fingerprinting obtains
13 either a criminal record clearance from the Department of Justice
14 or an exemption from disqualification pursuant to subdivision (f)
15 from the State Department of Social Services pending the
16 department's receipt of the Federal Bureau of Investigation's
17 criminal history for the person, the department may, but is not
18 required to, allow that person to be employed by, to reside at, or
19 to be present in the residential care facility for the elderly if the
20 person has signed and submitted a declaration, under penalty of
21 perjury, that he or she has never been convicted of a crime in the
22 United States, other than an infraction. If after obtaining a criminal
23 record clearance or exemption for a person specified in
24 subdivision (b) who is not exempted from fingerprinting, the
25 department determines, based on the results from the Federal
26 Bureau of Investigation's criminal record search, that the person
27 has a conviction for any crime other than an infraction, the
28 department shall determine if the person should be removed or
29 excluded, or both, from the facility pursuant to paragraph (3) of
30 subdivision (c) until a decision on the exemption from
31 disqualification is rendered.

32 (G) If, after licensure or the granting of a special permit, the
33 department determines that the licensee, special permitholder, or
34 a person specified in subdivision (b) who is not exempted from
35 fingerprinting has a conviction of an offense other than an
36 infraction, the license may be revoked pursuant to Section 1569.50
37 or the person may be excluded from the facility pursuant to Section
38 1569.58. The department may also suspend the license pending an
39 administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) (1) In addition to the applicant, the provisions of this section shall apply to criminal convictions and arrests of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, at the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.

(F) Additional officers of the governing body of the applicant or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from requirements applicable under paragraph (1):

- 1 (A) A spouse, relative, significant other, or close friend of a
2 client shall be exempt if this person is visiting the client or provides
3 direct care and supervision to that client only.
- 4 (B) A volunteer to whom all of the following apply:
- 5 (i) The volunteer is at the facility during normal waking hours.
- 6 (ii) The volunteer is directly supervised by the licensee, special
7 permitholder, or a facility employee with a criminal record
8 clearance or exemption.
- 9 (iii) The volunteer spends no more than 16 hours per week at
10 the facility.
- 11 (iv) The volunteer does not provide clients with assistance in
12 dressing, grooming, bathing, or personal hygiene.
- 13 (v) The volunteer is not left alone with clients in care.
- 14 (C) A third-party contractor retained by the facility if the
15 contractor is not left alone with clients in care.
- 16 (D) A third-party contractor or other business professional
17 retained by a client and at the facility at the request or by
18 permission of that client. These individuals shall not be left alone
19 with other clients.
- 20 (E) Licensed or certified medical professionals are exempt
21 from fingerprint and criminal background check requirements
22 imposed by community care licensing. This exemption shall not
23 apply to a person who is a residential care facility for the elderly
24 licensee, special permitholder, or an employee of the facility.
- 25 (F) Employees of licensed home health agencies and members
26 of licensed hospice interdisciplinary teams who have contact with
27 a resident of a residential care facility at the request of the resident
28 or resident's legal decisionmaker are exempt from fingerprint and
29 criminal background check requirements imposed by community
30 care licensing. This exemption shall not apply to a person who is
31 a residential care facility for the elderly licensee, special
32 permitholder, or an employee of the facility.
- 33 (G) Clergy and other spiritual caregivers who are performing
34 services in common areas of the residential care facility, or who are
35 advising an individual resident at the request of, or with
36 permission of, the resident, are exempt from fingerprint and
37 criminal background check requirements imposed by community
38 care licensing. This exemption shall not apply to a person who is
39 a residential care facility for the elderly licensee, special
40 permitholder, or an employee of the facility.

1 (H) Any person similar to those described in this subdivision,
2 as defined by the department in regulations.

3 (3) Nothing in paragraph (2) shall prevent a licensee or special
4 permitholder from requiring a criminal record clearance of any
5 individual exempt from the requirements of this section, provided
6 that the individual has client contact.

7 (c) (1) (A) Any person required to be fingerprinted pursuant
8 to subdivision (b) shall obtain either a criminal record clearance
9 from the Department of Justice or an exemption from
10 disqualification pursuant to subdivision (f) from the State
11 Department of Social Services prior to his or her initial presence
12 in a residential care facility for the elderly. Any person specified
13 in subdivision (b) who is not exempted from fingerprinting shall
14 be fingerprinted and shall sign a declaration, under penalty of
15 perjury, regarding any prior criminal conviction. The licensee or
16 special permitholder shall submit these fingerprints, along with a
17 second set of fingerprints for the purpose of searching the records
18 of the Federal Bureau of Investigation, to the Department of
19 Justice, or shall comply with paragraph (1) of subdivision (g).

20 (B) These fingerprints shall be in a form required by the State
21 Department of Social Services, or sent by electronic transmission
22 in a manner approved by the State Department of Social Services
23 and the Department of Justice and submitted to the Department of
24 Justice by the licensee. A licensee's or special permitholder's
25 failure to prohibit the initial presence in a facility of any person
26 specified in subdivision (b) who is not exempted from
27 fingerprinting and who has not received either a criminal record
28 clearance or an exemption from disqualification pursuant to
29 subdivision (f) shall result in the citation of a deficiency and the
30 immediate assessment of civil penalties, by the State Department
31 of Social Services and against the licensee or special permitholder,
32 in the amount of one hundred dollars (\$100) per violation per day,
33 for a maximum of 50 days, and shall also be grounds for
34 disciplining the licensee pursuant to Section 1569.50. A licensee's
35 or special permitholder's failure to submit fingerprints to the
36 Department of Justice, or to comply with paragraph (1) of
37 subdivision (g), as required in this section, shall result in the
38 citation of a deficiency and an immediate assessment of civil
39 penalties, by the State Department of Social Services and against
40 the licensee or special permitholder, in the amount of one hundred

1 dollars (\$100) per violation per day, for a maximum of 50 days,
2 and shall be grounds for disciplining the licensee pursuant to
3 Section 1569.50. The department may also assess civil penalties
4 for continued violations as permitted by Section 1569.49.
5 Documentation of the individual's clearance or exemption shall be
6 maintained by the licensee or special permitholder and shall be
7 available for inspection. The Department of Justice shall notify the
8 department, as required by that section, and notify the licensee or
9 special permitholder by mail within 14 days of electronic
10 transmission of the fingerprints to the Department of Justice, if the
11 person has no criminal history information. A violation of the
12 regulations adopted pursuant to Section 1522.04 shall result in the
13 citation of a deficiency and an immediate assessment of civil
14 penalties, by the State Department of Social Services and against
15 the licensee or special permitholder, in the amount of one hundred
16 dollars (\$100) per violation per day, for a maximum of 50 days,
17 and shall be grounds for disciplining the licensee pursuant to
18 Section 1569.50. The department may also assess civil penalties
19 for continued violations as permitted by Section 1569.49.

20 (2) Within 14 calendar days of the receipt of the fingerprints,
21 the Department of Justice shall notify the State Department of
22 Social Services of the criminal record information, as provided for
23 in this subdivision. If no criminal history information has been
24 recorded, the Department of Justice shall provide the licensee or
25 special permitholder and the State Department of Social Services
26 with a statement of that fact within 14 calendar days of receipt of
27 the fingerprints. If new fingerprints are required for processing,
28 the Department of Justice shall, within 14 calendar days from the
29 date of receipt of the fingerprints, notify the licensee or special
30 permitholder that the fingerprints are required.

31 (3) Except for persons specified in subdivision (b) as exempt
32 from the criminal record clearance requirement, the licensee or
33 special permitholder shall endeavor to ascertain the previous
34 employment history of persons required to be fingerprinted under
35 subdivision (b). If the State Department of Social Services
36 determines, on the basis of the fingerprints submitted to the
37 Department of Justice, that subsequent to obtaining either a
38 criminal record clearance or exemption from disqualification
39 pursuant to subdivision (f), the person has been convicted of a sex
40 offense against a minor, an offense specified in Section 243.4,

1 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
 2 Department of Social Services shall notify the licensee or special
 3 permitholder in writing within 15 calendar days of the receipt of
 4 the notification from the Department of Justice to act immediately
 5 to terminate the person's employment, remove the person from the
 6 residential care facility for the elderly, or bar the person from
 7 entering the residential care facility for the elderly, as appropriate.
 8 The department may subsequently grant an exemption pursuant to
 9 subdivision (f). If the conviction was for another crime, except for
 10 an infraction, the licensee or special permitholder shall, upon
 11 notification by the department, act immediately to either (A)
 12 terminate the person's employment, remove the person from the
 13 residential care facility for the elderly, or bar the person from
 14 entering the residential care facility for the elderly, as appropriate;
 15 or (B) seek an exemption pursuant to subdivision (f). The
 16 department shall determine if the person shall be allowed to remain
 17 in the facility until a decision on the exemption is rendered by the
 18 department. A licensee's or special permit holder's failure to
 19 comply with the department's prohibition of employment, contact
 20 with clients, or presence in the facility as required by this
 21 paragraph shall result in a citation of a deficiency and an
 22 immediate assessment of civil penalties, by the department and
 23 against the licensee or special permitholder, in the amount of one
 24 hundred dollars (\$100) per violation per day, for a maximum of 50
 25 days, and shall be grounds for disciplining the licensee pursuant
 26 to Section 1569.50.

27 (4) The department may issue an exemption on its own motion
 28 pursuant to subdivision (f) if the person's criminal history
 29 indicates that the person is of good character based on the age,
 30 seriousness, and frequency of the conviction or convictions. The
 31 department, in consultation with interested parties, shall develop
 32 regulations to establish the criteria to grant an exemption from
 33 disqualification pursuant to this paragraph.

34 (5) Only an applicant for licensure or a special permit or a
 35 licensee or special permitholder may request an exemption
 36 pursuant to subdivision (f) on behalf of an individual specified in
 37 subdivision (b) who is not exempt from fingerprinting.

38 (d) (1) For purposes of this section or any other provision of
 39 this chapter, a conviction means a plea or verdict of guilty or a
 40 conviction following a plea of nolo contendere. Any action that the

1 department is permitted to take following the establishment of a
2 conviction may be taken when the time for appeal has elapsed,
3 when the judgment of conviction has been affirmed on appeal, or
4 when an order granting probation is made suspending the
5 imposition of the sentence, notwithstanding a subsequent order
6 pursuant to the provisions of Sections 1203.4 and 1203.4a of the
7 Penal Code permitting a person to withdraw his or her plea of
8 guilty and to enter a plea of not guilty, or setting aside the verdict
9 of guilty, or dismissing the accusation, information, or indictment.
10 For purposes of this section or any other provision of this chapter,
11 the record of a conviction, or a copy thereof certified by the clerk
12 of the court or by a judge of the court in which the conviction
13 occurred, shall be conclusive evidence of the conviction. For
14 purposes of this section or any other provision of this chapter, the
15 arrest disposition report certified by the Department of Justice or
16 documents admissible in a criminal action pursuant to Section
17 969b of the Penal Code shall be prima facie evidence of the
18 conviction, notwithstanding any other provision of law
19 prohibiting the admission of these documents in a civil or
20 administrative action.

21 (2) For purposes of this section or any other provision of this
22 chapter, the department shall consider criminal convictions from
23 another state or federal court or arrests from another state or by any
24 federal agency, as if the criminal offense was committed in this
25 state.

26 (e) The State Department of Social Services shall not use a
27 record of arrest to deny, revoke, or terminate any application,
28 license, special permit, employment, or residence unless the
29 department investigates the incident and secures evidence,
30 whether or not related to the incident of arrest, that is admissible
31 in an administrative hearing to establish conduct by the person that
32 may pose a risk to the health and safety of any person who is or may
33 become a client. The department is authorized to obtain any arrest
34 or conviction records or reports from any law enforcement agency
35 as necessary to the performance of its duties to inspect, license,
36 issue a special permit for, and investigate residential care facilities
37 for the elderly and individuals associated with a residential care
38 facility for the elderly.

39 (f) (1) After review of the record, the director may grant an
40 exemption from disqualification for a license as specified in

subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant or other person convicted of the crime is of such good character as to justify issuance of the license or special permit or granting an exemption pursuant to this subdivision. However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, subdivision (b) of Section 237, Section 243.4, Section 246, Section 264.1, Section 266a, Section 266e, Section 273a, Section 273ab, Section 273d, subdivision (e) of Section 273.5, Section 288, or Section 289 of the Penal Code, any offense listed in Section 290 of the Penal Code, any conviction for which a court ordered the individual to register as a sex offender pursuant to Section 290 of the Penal Code, Section 368, or subdivision (b) of Section 417, of the Penal Code, a conviction of any crime specified in subdivision (c) of Section 667.5 of the Penal Code, or any crime of violence specified in any regulation.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, or subdivision (a) of Section 451 of the Penal Code.

(C) An offense specified in Section 11379.6 of the *Health and Safety Code*.

(D) First degree burglary.

(2) The director shall notify in writing the licensee, special permitholder, or applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(3) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the State Department of Social Services may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal

1 record clearance has been processed through a state licensing
2 district office, and is being transferred to another facility licensed
3 by a state licensing district office. The request shall be submitted
4 in writing to the department, and shall include a copy of the
5 person's driver's license or valid identification card issued by the
6 Department of Motor Vehicles, or a valid photo identification
7 issued by another state or the United States government if the
8 person is not a California resident. Upon request of the licensee or
9 special permitholder, who shall enclose a self-addressed stamped
10 envelope for this purpose, the department shall verify whether the
11 individual has a clearance that can be transferred.

12 (2) The department shall hold criminal record clearances in its
13 active files for a minimum of two years after a person is no longer
14 employed by, residing at, or present in a licensed facility in order
15 for the criminal record clearances to be transferred under this
16 section.

17 (h) If a licensee, special permitholder, or facility is required by
18 law to deny employment or to terminate employment of any
19 employee based on written notification from the department that
20 the employee has a prior criminal conviction, or an arrest for any
21 crime specified in subparagraph (B) of paragraph (1) of
22 subdivision (a), or is determined unsuitable for employment under
23 Section 1569.58, the licensee, special permitholder, or facility
24 shall not incur civil liability or unemployment insurance liability
25 as a result of that denial or termination.

26 SEC. 4. Section 1596.871 of the Health and Safety Code is
27 amended to read:

28 1596.871. The Legislature recognizes the need to generate
29 timely and accurate positive fingerprint identification of
30 applicants as a condition of issuing licenses, permits, or
31 certificates of approval for persons to operate or provide direct
32 care services in a child care center or family child care home.
33 Therefore, the Legislature supports the use of the fingerprint
34 live-scan technology, as defined in the long-range plan of the
35 Department of Justice for fully automating the processing of
36 fingerprints and other data by the year 1999, otherwise known as
37 the California Crime Information Intelligence System (CAL-CII),
38 to be used for applicant fingerprints. It is the intent of the
39 Legislature in enacting this section to require the fingerprints of



1 those individuals whose contact with child day care facility clients
2 may pose a risk to the children's health and safety.

3 (a) (1) Before issuing a license or special permit to any person
4 to operate or manage a child care facility licensed pursuant to this
5 chapter, and before any person specified in subdivision (b) who is
6 not exempted from fingerprinting is employed by, resides at, or is
7 present in a child care facility, the department shall secure from an
8 appropriate law enforcement agency criminal history information
9 to determine whether the applicant or any other person specified
10 in subdivision (b) who is not exempted from fingerprinting has
11 ever been convicted of any crime other than an infraction, or
12 arrested for any crime specified in Section 290 of the Penal Code,
13 for violating Section 245 or 273.5 of the Penal Code, for violating
14 subdivision (b) of Section 273a of the Penal Code, or, prior to
15 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
16 or convicted of any crime for which the department cannot grant
17 an exemption from disqualification pursuant to subdivision (f).

18 (2) The criminal history information shall include the full
19 criminal record, if any, of those persons and subsequent arrest
20 information pursuant to Section 11105.2 of the Penal Code.

21 (3) No fee shall be charged by the Department of Justice or the
22 department for the fingerprinting of an applicant who will serve
23 six or fewer children or any child care home applicant for a license
24 or special permit, or for obtaining a criminal record of an applicant
25 pursuant to this section.

26 (4) The following shall apply to the criminal record
27 information:

28 (A) If the State Department of Social Services finds that the
29 applicant or any other person specified in subdivision (b) who is
30 not exempted from fingerprinting has been convicted of a crime,
31 other than an infraction, the application shall be denied, unless the
32 director grants an exemption pursuant to subdivision (f).

33 (B) If the department finds that the applicant, or any other
34 person specified in subdivision (b) who is not exempted from
35 fingerprinting, is awaiting trial for a crime other than an infraction,
36 the department may cease processing the application until the
37 conclusion of the trial or other disposition of the case.

38 (C) If no criminal history information has been recorded, the
39 Department of Justice shall provide the applicant and the State
40 Department of Social Services with a statement of that fact.

(D) If the department finds after licensure or the issuance of a special permit that the licensee, special permitholder, or any other person specified in subdivision (b) who is not exempted from fingerprinting, has been convicted of a crime other than an infraction, the license or special permit may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) In addition to the criminal records search required by this subdivision, an applicant for licensure or for a special permit shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation. If an applicant meets all other conditions for licensure or for a special permit, except for the State Department of Social Services' receipt of the Federal Bureau of Investigation's criminal history information for the applicant, the department may, but is not required to, issue a license or special permit if the applicant has signed and submitted a declaration, under penalty of perjury, that he or she has never been convicted of a crime in the United States, other than an infraction. If, after licensure or the issuance of a special permit, the department determines, based on the results from the Federal Bureau of Investigation's criminal record search, that the licensee or special permitholder has a conviction for any crime other than an infraction, the department may revoke the license pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(F) In addition to the criminal records search required by this subdivision, each person specified in subdivision (b) who is not exempted from fingerprinting shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation records for that person. If any person specified in subdivision (b) who is not exempted from fingerprinting obtains either a criminal record clearance from the Department of Justice or an exemption from disqualification pursuant to subdivision (f) from the State Department of Social Services pending the department's receipt of the Federal Bureau of Investigation's criminal history for the person, the department may allow that person to be employed by, reside at, or be present in the child care facility if the person has signed and submitted a declaration, under penalty of perjury, that he or she has never been convicted of a

crime in the United States, other than an infraction. If after obtaining a criminal record clearance or exemption for a person specified in subdivision (b) who is not exempted from fingerprinting, the department determines, based on the results from the Federal Bureau of Investigation's criminal record search, that a person specified in subdivision (b) who is not exempted from fingerprinting has a conviction for any crime other than an infraction, the department shall determine if the person should be removed *or excluded, or both*, from the child care facility pursuant to paragraph (2) of subdivision (c) until a decision on the exemption from disqualification is rendered.

(G) If, after licensure or the issuance of a special permit, the department determines that the licensee or special permitholder or person specified in subdivision (b) who is not exempted from fingerprinting has a criminal record, the license may be revoked pursuant to Section 1596.885, or the person may be excluded from the facility pursuant to Section 1596.8712. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions and arrests of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the child care facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as

1 determined necessary by the department by regulation. The
2 criteria used in the development of these regulations shall be based
3 on the person's capability to exercise substantial influence over the
4 operation of the facility.

5 (2) The following persons are exempt from the requirements
6 applicable under paragraph (1):

7 (A) A volunteer providing time-limited specialized services if
8 this person is directly supervised by the licensee, special
9 permitholder, or a child care facility employee with a criminal
10 record clearance or exemption, the volunteer spends no more than
11 16 hours per week at the child care facility, and the volunteer is not
12 left alone with children in care.

13 (B) A student enrolled or participating at an accredited
14 educational institution if the student is directly supervised by the
15 licensee, special permitholder, or a child care facility employee
16 with a criminal record clearance or exemption, the child care
17 facility has an agreement with the educational institution
18 concerning the placement of the student, the student spends no
19 more than 16 hours per week at the child care facility, and the
20 student is not left alone with children in care.

21 (C) A volunteer who is a relative, legal guardian, or foster
22 parent of a child in the child care facility.

23 (D) A contracted repair person retained by the child care
24 facility, if not left alone with children in care.

25 (E) Any person similar to those described in this subdivision,
26 as defined by the department in regulations.

27 (F) Employees of child care and development programs under
28 contract with the State Department of Education who have
29 completed a criminal records clearance as part of an application to
30 the Commission on Teacher Credentialing, and who possess a
31 current credential or permit issued by the commission, including
32 employees of child care and development programs that serve both
33 children subsidized under, and children not subsidized under, a
34 State Department of Education contract. The Commission on
35 Teacher Credentialing shall notify the department upon revocation
36 of a current credential or permit issued to an employee of a child
37 care and development program under contract with the State
38 Department of Education.

39 (G) Employees of a child care and development program
40 operated by a school district, county office of education, or

1 community college district under contract with the State
2 Department of Education who have completed a criminal record
3 clearance as a condition of employment. The school district,
4 county office of education, or community college district upon
5 receiving information that the status of an employee's criminal
6 record clearance has changed shall submit that information to the
7 department.

8 (3) Nothing in this subdivision shall prevent a licensee or
9 special permitholder from requiring a criminal record clearance of
10 any individuals exempt from the requirements under this
11 subdivision.

12 (c) (1) (A) Any person specified in subdivision (b) who is not
13 exempted from fingerprinting shall obtain, prior to his or her initial
14 presence in a child care facility, either a criminal record clearance
15 from the Department of Justice or an exemption from
16 disqualification pursuant to subdivision (f) from the State
17 Department of Social Services. Any person specified in
18 subdivision (b) who is not exempted from fingerprinting shall be
19 fingerprinted and shall sign a declaration, under penalty of perjury,
20 regarding any prior criminal conviction. The licensee or special
21 permit holder shall submit these fingerprints to the Department of
22 Justice, along with a second set of fingerprints for the purpose of
23 searching the records of the Federal Bureau of Investigation, or
24 shall comply with paragraph (1) of subdivision (h).

25 (B) These fingerprints shall be in a form required by the State
26 Department of Social Services for the purpose of obtaining a
27 permanent set of fingerprints and submitted to the Department of
28 Justice by the licensee or sent by electronic transmission in a
29 manner approved by the State Department of Social Services. A
30 licensee's or special permitholder's failure to prohibit the initial
31 presence in a child care facility of any person specified in
32 subdivision (b) who is not exempted from fingerprinting and who
33 has not received either a criminal record clearance or an exemption
34 from disqualification pursuant to subdivision (f) shall result in a
35 citation of a deficiency and the immediate assessment of civil
36 penalties, by the department and against the licensee or special
37 permitholder, in the amount of one hundred dollars (\$100) per
38 violation per day, for a maximum of 50 days, and shall be grounds
39 for disciplining the licensee pursuant to Section 1596.885 or
40 1596.886. A licensee's or special permitholder's failure to submit

1 fingerprints to the Department of Justice, or to comply with
2 paragraph (1) of subdivision (h), as required in this section, shall
3 result in the citation of a deficiency, by the State Department of
4 Social Services and against the licensee or special permitholder,
5 and an immediate assessment of civil penalties in the amount of
6 one hundred dollars (\$100) per violation per day, for a maximum
7 of 50 days, and shall be grounds for disciplining the licensee
8 pursuant to Section 1596.885 or 1596.886. The State Department
9 of Social Services may assess civil penalties for continued
10 violations permitted by Sections 1596.99 and 1597.62. The
11 fingerprints shall then be submitted to the Department of Justice
12 for processing. Within 14 calendar days of the receipt of the
13 fingerprints, the Department of Justice shall notify the State
14 Department of Social Services of the criminal history information,
15 as provided in this subdivision. If no criminal history information
16 has been recorded, the Department of Justice shall provide the
17 licensee or special permitholder and the State Department of
18 Social Services with a statement of that fact within 14 calendar
19 days of receipt of the fingerprints. If new fingerprints are required
20 for processing, the Department of Justice shall, within 14 calendar
21 days from the date of receipt of the fingerprints, notify the licensee
22 that the fingerprints are required.

23 (C) Documentation of the individual's clearance or exemption
24 from disqualification pursuant to subdivision (f) shall be
25 maintained by the licensee or special permitholder, and shall be
26 available for inspection. The Department of Justice shall notify the
27 department, as required by Section 1522.04, and shall notify the
28 licensee or special permitholder, by mail within 14 days of
29 electronic transmission of the fingerprints to the Department of
30 Justice, if the person has no criminal history. Any violation of the
31 regulations adopted pursuant to Section 1522.04 shall result in the
32 citation of a deficiency and an immediate assessment of civil
33 penalties, by the State Department of Social Services and against
34 the licensee or special permitholder, in the amount of one hundred
35 dollars (\$100) per violation per day, for a maximum of 50 days,
36 and shall be grounds for disciplining the licensee pursuant to
37 Section 1596.885 or 1596.886. The department may assess civil
38 penalties for continued violations, as permitted by Sections
39 1596.99 and 1597.62.



1 (2) Except for persons specified in subdivision (b) who are not
2 exempted from fingerprinting, the licensee or special
3 permitholder shall endeavor to ascertain the previous employment
4 history of persons required to be fingerprinted under subdivision
5 (b). If it is determined by the department, on the basis of
6 fingerprints submitted to the Department of Justice, that
7 subsequent to obtaining either a criminal record clearance or
8 exemption from disqualification pursuant to subdivision (f), the
9 person has been convicted of a sex offense against a minor, an
10 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the
11 Penal Code, or a felony, the State Department of Social Services
12 shall notify the licensee or special permitholder to act immediately
13 to terminate the person's employment, remove the person from the
14 child care facility, or bar the person from entering the child care
15 facility. The department may subsequently grant an exemption
16 from disqualification pursuant to subdivision (f). If the conviction
17 was for another crime except for an infraction, the licensee or
18 special permitholder shall, upon notification by the department,
19 act immediately to either (A) terminate the person's employment,
20 remove the person from the child care facility, or bar the person
21 from entering the child care facility, or (B) seek an exemption
22 pursuant to subdivision (f). The department shall determine if the
23 person shall be allowed to remain in the child care facility until a
24 decision on the exemption from disqualification pursuant to
25 subdivision (f) is rendered. A licensee's or special permitholder's
26 failure to comply with the department's prohibition of
27 employment, contact with clients, or presence in the child care
28 facility as required by this paragraph shall result in a citation of a
29 deficiency and an immediate assessment of civil penalties, by the
30 department and against the licensee or special permitholder, in the
31 amount of one hundred dollars (\$100) per violation per day, for a
32 maximum for 50 days, and shall be grounds for disciplining the
33 licensee pursuant to Section 1596.885 or 1596.886.

34 (3) The department may issue an exemption on its own motion
35 pursuant to subdivision (f) if the person's criminal history
36 indicates that the person is of good character based on the age,
37 seriousness, and frequency of the conviction or convictions. The
38 department, in consultation with interested parties, shall develop
39 regulations to establish the criteria to grant an exemption pursuant
40 to this paragraph.



1 (4) Only an applicant for licensure or a special permit or a
2 licensee or special permitholder may request an exemption on
3 behalf of an individual specified in subdivision (b) who is not
4 exempted from fingerprinting.

5 (d) (1) For purposes of this section or any other provision of
6 this chapter, a conviction means a plea or verdict of guilty or a
7 conviction following a plea of nolo contendere. Any action that the
8 department is permitted to take following the establishment of a
9 conviction may be taken when the time for appeal has elapsed,
10 when the judgment of conviction has been affirmed on appeal, or
11 when an order granting probation is made suspending the
12 imposition of sentence, notwithstanding a subsequent order
13 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
14 permitting the person to withdraw his or her plea of guilty and to
15 enter a plea of not guilty, or setting aside the verdict of guilty, or
16 dismissing the accusation, information, or indictment. For
17 purposes of this section or any other provision of this chapter, the
18 record of a conviction, or a copy thereof certified by the clerk of
19 the court or by a judge of the court in which the conviction
20 occurred, shall be conclusive evidence of the conviction. For
21 purposes of this section or any other provision of this chapter, the
22 arrest disposition report certified by the Department of Justice, or
23 documents admissible in a criminal action pursuant to Section
24 969b of the Penal Code, shall be prima facie evidence of
25 conviction, notwithstanding any other provision of law
26 prohibiting the admission of these documents in a civil or
27 administrative action.

28 (2) For purposes of this section or any other provision of this
29 chapter, the department shall consider criminal convictions from
30 another state or federal court as if the criminal offense was
31 committed in this state.

32 (e) The State Department of Social Services shall not use a
33 record of arrest to deny, revoke, or terminate any application,
34 license, special permit, employment, or residence unless the
35 department investigates the incident and secures evidence,
36 whether or not related to the incident of arrest, that is admissible
37 in an administrative hearing to establish conduct by the person that
38 may pose a risk to the health and safety of any person who is or may
39 become a client. The department is authorized to obtain any arrest
40 or conviction records or reports from any law enforcement agency

as necessary to the performance of its duties to inspect, license, issue a special permit for, and investigate child care facilities and individuals associated with child care facilities.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in subdivision (a), or for employment, residence, or presence in a child care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant or other person convicted of the crime is of good character so as to justify issuance of the license or special permit or granting an exemption pursuant to this subdivision. However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, subdivision (b) of Section 237, Section 243.4, Section 246, Section 264.1, Section 266a, Section 266e, Section 273a, Section 273ab, Section 273d, subdivision (e) of Section 273.5, Section 288, or Section 289, of the Penal Code, any offense listed in Section 290 of the Penal Code, any conviction for which the court has ordered the person to register as a sex offender pursuant to Section 290 of the Penal Code, Section 368, or subdivision (b) of Section 417, of the Penal Code, a conviction of any crime specified in subdivision (c) of Section 667.5 of the Penal Code, or any crime of violence specified in any regulation.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, or subdivision (a) or (b) of Section 451, of the Penal Code.

(C) An offense specified in Section 11379.6 of the *Health and Safety Code*.

(D) First degree burglary.

(2) The department shall not prohibit a person from being employed or having contact with clients in a child care facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee or special permitholder, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

1 (h) (1) For the purposes of compliance with this section, the
2 State Department of Social Services may permit an individual to
3 transfer a current criminal record clearance, as defined in
4 subdivision (a), from one child care facility to another, as long as
5 the criminal record clearance has been processed through a state
6 licensing office, and is being transferred to another child care
7 facility licensed by a state licensing office. The request shall be in
8 writing to the department, and shall include a copy of the person's
9 driver's license or valid identification card issued by the
10 Department of Motor Vehicles, or a valid photo identification
11 issued by another state or the United States government if the
12 person is not a California resident. Upon request of the licensee or
13 special permitholder, who shall enclose a self-addressed stamped
14 envelope for this purpose, the department shall verify whether the
15 individual has a clearance that can be transferred.

16 (2) The department shall hold criminal record clearances in its
17 active files for a minimum of two years after a person is no longer
18 employed by, residing at, or present in a licensed child care facility
19 in order for the criminal record clearances to be transferred.

20 SEC. 5. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

